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Dated: May 26, 2010 Signature: /Mark D. Russett/
Mark D. Russett, Reg. No. 41,281

Docket No.: 62069DIV2 (51590)
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
G. Pasternak et al.

Application No.: 10/823,365

Confirmation No.: 4859

Filed: April 13, 2004

Art Unit: 1627

For: TOPICAL ANESTHETIC/OPIOID
FORMULATIONS AND USES THEREOF

Examiner: K.R. McMillian

SUBMISSION OF TERMINAL DISCLAIMER

MS AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In a telephonic interview on May 7, 2010, the Examiner indicated that some or all of the pending claim(s) of the subject application could be rejected for alleged obviousness-type double patenting over one or more claims of co-owned U.S. Patent No. 7,700,122.

Applicants disagree, and contend that all pending claims are patentably distinct over the claims of U.S. Patent No. 7,700,122. Nevertheless, without agreeing with this rejection, and solely to expedite allowance of the present application, Applicants submit herewith a terminal disclaimer over U.S. Patent No. 7,700,122. Applicants accordingly contend that any potential rejection for obviousness-type double patenting has been obviated.

CONCLUSION

Applicants believe the pending application is in condition for allowance. Early and favorable action is earnestly requested.

Applicants conditionally petition for any extension of time necessary for consideration of this response. The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 04-1105, under Order No. 62069DIV2 (51590).

Respectfully submitted,

Date: May 26, 2010

By: /Mark D. Russett/

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